

1 address that appropriately? "Documents or data (including
2 documents or data relied upon by an expert witness in his or
3 her report) produced by any party pursuant to the disclosure
4 obligations set forth in the scheduling order relating to
5 expert discovery or in any other agreement or order."

6 MS. WOOD: I can tell you, Your Honor, that as I
7 understand -- if by B they mean to suggest that their
8 experts are not going to rely on material that was not
9 produced in fact discovery, then I agree, that takes care of
10 it. In our meet-and-confer, we've had multiple sessions
11 about this. That is not my understanding of their position,
12 but they can clarify that.

13 But if by B they mean they do not intend for their
14 experts to rely on material outside the fact discovery
15 cutoff, then I think our only agreement is about
16 commercially-available data.

17 The one other thing I should add just for
18 completeness, but I think this could be, you know, taken up
19 at a different date, is there may come a time, if there is a
20 liability finding here, that the Court would need to
21 consider appropriate equitable remedies.

22 We acknowledge that the scope of material that
23 might need to be reviewed for equitable remedy purposes
24 might need to reflect more current data. And so we're not
25 taking the position that they're precluded forever from

1 producing new material in that regard. That was really
2 honestly more for their benefit and for the Court's benefit.
3 We didn't want the Court -- we wanted the Court to
4 understand that we were sympathetic -- would be sympathetic
5 to that concern.

6 If they don't want that provision, I think we can
7 deal with that when and if that occurs, but I think we are
8 most concerned that experts not be allowed to rely on
9 material outside the fact discovery cutoff.

10 THE COURT: Okay.

11 MS. WOOD: Thank you, Your Honor.

12 THE COURT: Mr. Ewalt, let me have you address --
13 and I think it's a valid concern. I mean, you know, in our
14 typical cases, the discovery cutoff date is both for fact
15 and expert discovery, so we don't have to deal with this
16 issue very often. But the idea that fact discovery sets the
17 parameters upon which this case will end up being tried has
18 some appeal to me. I mean, there has to be an end to it at
19 some point. And, you know, if fact discovery has been
20 set -- we've set a date for when all the fact discovery
21 needs to be done. Obviously if there's a motion to compel,
22 and something has to be done after that, that will, you
23 know, have to get swept into that. But, you know, giving
24 someone the unfettered ability to continue to go out and
25 gather new facts and to do further fact-finding efforts or